

## LEGISLATIVE BILL 255

Approved by the Governor April 2, 2007

Introduced by Rogert, 16; Pirsch, 4

FOR AN ACT relating to labor; to amend sections 48-1228, 48-1229, 48-1230, and 48-1232, Reissue Revised Statutes of Nebraska; to change provisions of the Nebraska Wage Payment and Collection Act; to redefine terms; to provide for unpaid wages constituting commissions; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 48-1228, Reissue Revised Statutes of Nebraska, is amended to read:

48-1228 Sections 48-1228 to 48-1232 and section 4 of this act shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

Sec. 2. Section 48-1229, Reissue Revised Statutes of Nebraska, is amended to read:

48-1229 For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(2) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(3) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs; and

(4) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Wages includes commissions on all orders delivered and all orders on file with the employer at the time of termination. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

Sec. 3. Section 48-1230, Reissue Revised Statutes of Nebraska, is amended to read:

48-1230 (1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has written agreement with the employee to deduct, withhold, or divert.

(2) Except as otherwise provided in section 4 of this act:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and -

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if - ~~When~~ an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

Sec. 4. Whenever an employer separates an employee from the payroll, the unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.

Sec. 5. Section 48-1232, Reissue Revised Statutes of Nebraska, is amended to read:

48-1232 If an employee establishes a claim and secures judgment on such claim under section 48-1231: (1) An amount equal to the judgment may be recovered from the employer; or (2) if the nonpayment of wages is found to be willful, an amount equal to two times the amount of unpaid wages shall be recovered from the employer. Any amount recovered pursuant to subdivision (1) or (2) of this section shall be placed in a fund ~~to be distributed to the common schools of this state.~~ remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 6. Original sections 48-1228, 48-1229, 48-1230, and 48-1232, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.